

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DYSON, INC.,	:	
	:	Case No. 10 Civ. 08126
Plaintiff,	:	Judge Samuel Der-Yeghiayan
v.	:	Magistrate Judge Maria Valdez
BISSELL HOMECARE, INC.,	:	
	:	JURY TRIAL DEMANDED
Defendant.	:	
	:	

JOINT MEMORANDUM REGARDING JURISDICTION

Pursuant to the Court's Order of March 17, 2011, the parties hereby jointly submit the following memorandum regarding the Court's jurisdiction over this case.

On December 27, 2006, Dyson, Inc. and BISSELL Homecare, Inc. entered into an agreement (the "Agreement") containing a covenant not to sue and an arbitration clause. (*See* Ex. A at §§ 2-4).

On December 22, 2010, Dyson filed this case. On February 3, 2011, BISSELL filed its Answer. On February 17, 2011, the parties filed a Joint Jurisdictional Status Report in this matter, consenting to this Court's jurisdiction.

BISSELL and Dyson have waived the right to seek arbitration in this case. Therefore, this Court has subject matter jurisdiction over the claims at issue in this case. *See Automobile Mechanics Local 79 Welfare and Pension Funds v. Vanguard Car Rental USA, Inc.*, 502 F.3d 740,743 (7th Cir. 2007) ("Enforcement of a forum selection clause (including an arbitration clause) is not jurisdictional; it is a waivable defense that Vanguard, in fact, waived"); *Gabanelli*

Accordions & Imports, L.L.C., v. Ditta Gabanelli Ubaldo Di Elio Gabanelli, 575 F.3d 693, 695 (7th Cir. 2009) ("The issue of the effect of the arbitration clause on the present lawsuit is . . . not jurisdictional").

The parties disagree about whether they have waived the covenant not to sue contained in the Agreement. (See Ex. A at § 2). Dyson believes that the parties have waived the covenant not to sue. *See Will v. Will Prods., Inc.*, 441 N.E. 2d 343, 346 (Ill. App. Ct. 1982). BISSELL believes that it has not waived the covenant not to sue. *See Automobile Mechanics, supra*.

Dated: April 29, 2011

Respectfully submitted,

By: /s/ David K. Callahan, P.C.

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